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OFFICE OF PETITIONS

In re Application of : DECISION ON
Moriichi et al. : PETITION
Application No. 09/761,961 :
Filed: January 17, 2001 :
Atty Docket No. 204684US6 :

This is a decision on the PETITION FOR RECONSIDERATION UNDER 37 C.F.R. §1.181/PETITION UNDER §1.137(b) FOR ACCEPTANCE OF UNINTENTIONALLY DELAYED PAPERS filed February 9, 2009. The status letter filed September 11, 2009 is acknowledged.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

By decision mailed December 8, 2008, the petition under 1.181 filed December 27, 2002 (and resubmitted November 16, 2004 and March 4, 2005¹) was **GRANTED to the extent** that the Notice of Abandonment mailed October 30, 2002 was withdrawn; however, the petition was **DISMISSED** to the extent that the holding of abandonment was not withdrawn. The decision stated that the application is held abandoned effective April 29, 2001 for failure to timely file a response to the Notice to File Missing Parts of Nonprovisional Application mailed February 28, 2001².

¹ Sometime after filing of the March 4, 2005 petition, these petitions were forwarded to the undersigned for consideration. Unfortunately, the undersigned could not act on the merits of the petitions until the application file was reconstructed. The reconstruction was not properly completed until about November 2008.

² Once the file was reconstructed, it was determined that the application was not abandoned as stated in the Notice of Abandonment mailed October 30, 2002.

The reconstructed papers revealed that a response to the Notice was received on May 25, 2001; however, the response was not proper or timely. None of the papers filed, which required his signature, were signed by the attorney of record (or any other party). Where used, his signature line was left blank. Absent the signature of the attorney on the accompanying documents the necessary payment of fees, including the extension of time required to make the response timely and the filing fees required by the Notice, were not submitted. Moreover, a review of the file history revealed that no general authorization to charge the required fees was present in the application on May 25, 2001. Accordingly, the prior decision concluded that as there was no signed document to rely on for timely submission of a complete and proper reply, the application was properly held abandoned. This conclusion was based on a determination that the papers submitted for reconstruction were the same as the papers originally filed on May 25, 2001³.

On instant request for reconsideration, petitioner contends that the papers provided to the Office were provided directly from the Applicant file, which included unexecuted versions of previously filed papers. Petitioner asserts that as can be appreciated from review of these papers, (e.g., by the photocopy hole punched marks in the top of these papers), these papers were not originally executed documents, instead, the originally executed documents were provided to the Patent Office on May 25, 2001.

Petitioner's arguments have been considered, but not found persuasive that withdrawal of the holding of abandonment is warranted. To avoid abandonment of the application, applicants had to have timely filed properly executed responses. The application is considered abandoned because the evidence of record only supports a conclusion that the papers filed May 25,

Therein, applicants had been advised that the above-identified application had become abandoned for failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance. The reconstruction revealed both that no notice of allowance had ever been mailed in this application and that no proper reply had been filed to the Notice to File Missing Parts. Accordingly, the application was abandoned for failure to properly reply to the Notice to File Missing Parts.

³ Petitioner references a date of March 25, 2001 for submission of the response. As petitioner indicates that this date is supported by Exhibit A, the itemized postcard date-stamped May 25, 2001, it is assumed that "March" 25, 2001 is referenced in error.

2001 were not executed. (It is noted that the fees are of record as they were submitted by separate check).

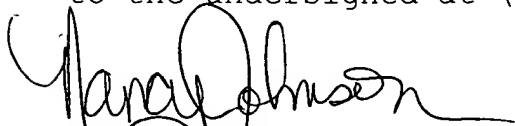
On instant renewed petition, petitioner has not provided persuasive evidence that the papers originally filed on May 25, 2001 were properly executed. It is undisputed that the papers filed May 25, 2001 (along with the entire application file) were misplaced by the Office. However, just because the file was misplaced, it cannot be presumed that the papers filed were proper. The Office then requires applicants to provide a copy of the papers as originally filed. Petitioner, in this instance, states that the papers as originally filed were executed; however, they did not retain a copy of the executed files. As applicants have not retained a copy of the papers as originally filed, they do not have the evidence necessary to show that a proper response was timely filed on May 25, 2001. Thus, the conclusion that withdrawal of the holding of abandonment is not warranted is affirmed.

Nonetheless, petitioner has met all requirements for revival pursuant to 37 CFR 1.137(b). The petition includes the required reply in the form of the responses now signed, payment of the petition fee and the required statement of unintentional delay.

It is noted that no further action is required by the Office of Patent Application Processing as the undersigned has been advised that pre-examination processing has been completed. Further, the application is not ready for consideration by the Office of Data Management as the indications in the record that a notice of allowance was mailed in this application are incorrect. This application was never allowed.

The application is being forwarded to Technology Center AU 2653 for examination in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized flourish at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions